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APR 14 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Paper No. 18

In re application of
Manfred Elzenbeck
Application No. 09/622,830
Filed: March 20, 2001
For: BEDSTEAD

DECISION ON PETITION
TO RESET A PERIOD
FOR REPLY

This is in reply to the Petition to Reset a Period for Reply Due to Late Receipt of an Office action, received in the Patent and Trademark Office on March 19, 2003.

The petition is **DISMISSED**.

In accordance with MPEP 710.06, the Office will grant a petition to reset the period for reply when the following criteria are met: (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address; (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g. at least 1 month of a 2- or 3- month reply period had elapsed); and (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address, and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt.

The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been delayed after receipt rather than a conclusion that the Office action was delayed in the mail or in the Office.

A review of the file record reveals that a final Office action was mailed to the address of record on January 6, 2003. The petition alleges that that Office action was not received in the office of the attorney until on or about February 20, 2003. The petition also provides a copy of the front and back side of the first sheet of the Office action which contains the mailing receipt date.

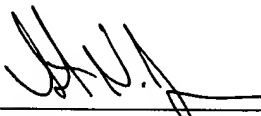
The petition lacks the evidence required in Items (A) and (C)(1), above. Specifically, the applicant indicates receipt of the Office communication on February 20, 2003 and thus the 2 week window expired on March 6, 2003.

With regards to Item (C) (1), a further review of the file record reveals that the correspondence address listed in the original declaration was to Evenson, McKeown, Edwards and Lenahan at 1200 G Street, N.W., Suite 700, Washington, DC 20005. This was the correspondence address of record. A change of correspondence address was filed on February 12, 2003 which directed further communications from the Office to be sent to Crowell & Moring, LLP at Intellectual Property Group, P.O. Box 1430, Washington, DC 20044-4300. Because the change in correspondence address was not filed with the Office prior to the January 6, 2003 communication, the Final Office action sent to the applicant from the Office was properly sent to the address of record; the 1200 G Street, N.W. address.

It is further noticed that the correspondence address on the copy of the first sheet of the Office action submitted as evidence is to Crowell & Moring, LLP at P.O. 1430, Washington, D.C. 20044-4300. However, the file copy of Office action indicates that it was sent to the firm of Evenson, McKeown, Edwards and Lenahan at the 1200 G Street address. A review of the request to change the correspondence address, filed February 12, 2003, reveals that all future communications from the Office be sent to the firm of Crowell & Moring, LLP at the P.O. Box 1430 address. The request was not a change of address for the firm of Evenson, McKeown, Edwards and Lenahan.

While MPEP 710.06 does give an applicant the ability to petition to show that a communication from the Patent Office was received late, this is predicated on the fact that the attorney was at the correspondence address to receive the communication. It appears that the Office action mailed January 6, 2003 did arrive at 1200 G Street address. But then it was forwarded by someone at this address, as noted by the change in the correspondence address on the copy of the first sheet of the Office action submitted as evidence.

The time period for response to the Final Rejection of January 6, 2003 continues to run 3 months from that date. The application is being returned to the Central Files holding area of TC 3600 to await applicant's response to that Office action.



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SNM/tpl: 4/9/03